



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

CENTRAL DELTA WATER AGENCY, et al.,

Petitioners,

v.

CALIFORNIA DEPARTMENT OF WATER RESOURCES,

Respondent,

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ZONE 7, et al.,

Real Parties in Interest

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, et al.,

Petitioners,

v.

CALIFORNIA DEPARTMENT OF WATER RESOURCES,

Respondent,

KERN WATER BANK AUTHORITY, et al.,

Real Parties in Interest.

Case No. 34-2010-80000561
Case No. 34-2010-80000703
[consolidated for CEQA Trial]

[PROPOSED] FINDINGS AND PEREMPTORY WRIT OF MANDATE (Public Resources Code § 21168.9)

Trial Date: January 31, 2014 [CEQA only]

1 In accordance with the Court's Rulings on Submitted Matter (March 5, 2014) and the
2 Court's Joint Ruling on Submitted Matter (October 2, 2014) in the above-entitled actions, the
3 Court hereby finds and orders with respect to the "Monterey Amendments to the State Water
4 Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of the
5 Settlement Agreement" (the Monterey Plus EIR) and the Monterey Plus Project, as follows:

6 **FINDINGS**

7 1. Except as provided below, the Department of Water Resources (DWR) complied with
8 the California Environmental Quality Act (CEQA) with respect to the Monterey Plus EIR and the
9 Monterey Plus Project. All prior project approvals and decisions, including the Monterey
10 Amendment, the Kern Fan Element Transfer Agreement, and the *PCL v. DWR* Settlement
11 Agreement, as well as DWR's May 2010 decision to continue operating the State Water Project
12 pursuant to the Monterey Amendment and *PCL v. DWR* Settlement Agreement at issue in this
13 case, shall remain in place and undisturbed by the Court's rulings and this writ.

14 2. The Monterey Plus EIR is deficient (i) because it fails to adequately describe the
15 development, use and operation of the Kern Water Bank lands as a water banking and recovery
16 project, and (ii) in its discussion, analysis, and (if appropriate) mitigation of the potential impacts
17 – particularly to groundwater hydrology and water quality – associated with the Kern Water Bank
18 Authority's (KWBA) anticipated use and operation of the Kern Water Bank lands as a water
19 banking and recovery project.

20 3. The use and operation of the Kern Water Bank lands as a water banking and recovery
21 project is severable from the other portions of the Monterey Plus Project.

22 4. Severance of the use and operation of the Kern Water Bank lands as a water banking
23 and recovery project from the other portions of the Monterey Plus Project will not prejudice
24 complete and full compliance with CEQA.

25 5. DWR shall be allowed to correct the deficiencies identified in the Court's Rulings on
26 Submitted Matter (March 5, 2014) and Joint Ruling on Submitted Matter (October 2, 2014) and
27 recertify a revised Monterey Plus EIR without reopening the non-defective portions of the
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1 Monterey Plus EIR. Upon recertification, only those portions of the revised Monterey Plus EIR
2 that are new or changed shall be subject to challenge under CEQA by petitioners or other
3 interested parties.

4 **PEREMPTORY WRIT OF MANDATE**

5 Pursuant to Public Resources Code section 21168.9, the Court commands as follows:

6 1. The use and operation of the Kern Water Bank is severed from the remainder of the
7 Monterey Plus Project.

8 2. DWR shall vacate its February 1, 2010 certification of the Monterey Plus EIR.

9 3. DWR shall revise the Monterey Plus EIR's project description to include the
10 development, use and operation of the Kern Water Bank as a water banking and recovery project,
11 and revise the Monterey Plus EIR as necessary to correct the CEQA error with respect to the
12 analysis of the potential impacts associated with the transfer, development, use and operation of
13 the Kern Water Bank as a water banking and recovery project as identified in the Court's Rulings
14 on Submitted Matter (March 5, 2014). DWR's preparation of the revised Monterey Plus EIR
15 shall be in accordance with the Court's rulings in the *Rosedale* and *Central Delta* matters.

16 4. DWR's May 2010 Monterey Plus Project decision as it related to the Kern Water
17 Bank's use and operation will remain in place on an interim basis pending preparation of an
18 adequate EIR. At the conclusion of the revised Monterey Plus EIR process, DWR (as lead
19 agency) and KWBA (as responsible agency) shall make a new determination regarding whether
20 to continue the use and operation of the Kern Water Bank by KWBA.

21 Except as otherwise provided herein, 5. DWR may continue to implement the Monterey Plus Project and operate the State
22 Water Project pursuant to the Monterey Amendment and the *PCL v. DWR* Settlement Agreement
23 without limitation.

24 6. Until this writ is discharged, KWBA may continue to use and operate the Kern Water
25 Bank lands as a water banking and recovery project subject to the following conditions:

26 (i) existing Kern Water Bank operations shall be maintained, but not expanded; and (ii) the Kern
27 Water Bank shall be subject to and operated in compliance with the "Interim Operations Plan" (a
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1 copy of which is attached hereto as Exhibit A and, by this reference, incorporated herein) and the
2 existing Kern Environmental Permits (as defined in the *PCL v. DWR* Settlement Agreement).

3 7. On or before December 31, 2014, DWR shall file an initial return reporting to the
4 Court the steps and schedule it proposes to comply with this writ. Unless the Court orders
5 otherwise for good cause shown, DWR must correct the deficiencies in the Monterey Plus EIR
6 and recertify a revised Monterey Plus EIR by December 31, 2015.

7 8. DWR shall, by way of final return to this peremptory writ of mandate, lodge with this
8 Court: (i) the revised Monterey Plus EIR, (ii) DWR's certification of and findings regarding same,
9 and (iii) the record of proceedings for that administrative action. The Court will conduct a
10 substantive review of the same for compliance with this peremptory writ of mandate. Only those
11 portions of the revised Monterey Plus EIR that are new or changed shall be subject to challenge
12 under CEQA by petitioners or other interested parties. No other challenges that were raised or
13 could have been raised with respect to the Monterey Plus EIR may be raised in any challenge to
14 the revised Monterey Plus EIR.

15 9. Except as provided herein, this peremptory writ of mandate shall not limit or
16 constrain DWR's lawful jurisdiction and discretion.

17 10. The Court shall retain jurisdiction over this proceeding until DWR files a final return
18 demonstrating compliance with this peremptory writ of mandate and ^{as necessary} CEQA, and this Court issues
19 an order discharging this peremptory writ of mandate.

20 Dated: November 24, 2014

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22 JUDGE OF THE SUPERIOR COURT